

**Minutes
Tax Exemptions Interim Committee
October 1, 2007
J.R. Williams Building, East Conference Room
Boise, Idaho**

The October 1, 2007 meeting was called to order at 9:00 a.m. by Cochairman Representative Dennis Lake. Other committee members present were Cochairman Senator Brent Hill, Senator Joe Stegner, Senator Tim Corder, Senator Lee Heinrich, Senator Jeff Siddoway, Representative Gary Collins, Representative Jim Clark, Representative Mike Moyle, Representative Dell Raybould, Representative Nicole LeFavour and Representative Bill Killen. Senator David Langhorst and Senator Diane Bilyeu were absent and excused. Legislative Services Office staff members present were Mike Nugent, Eric Milstead and Toni Hobbs.

Other members present were Joe Gallegos and Jim Carrel, American Association of Retired Persons (AARP); Robin Nettinga, Idaho Education Association; Roy Eiguren, Amalgamated Sugar; Randy Nelson, Associated Taxpayers of Idaho; Tom Ryder, J.R. Simplot Company; Erin Bennett, John Watts and Ken Burgess, Veritas Advisors; Derek Santos, Division of Financial Management; Russ Hendricks, Farm Bureau; Betsy Russell, The Spokesman Review; Benjamin Davenport, Evans Keane; Woody Richards, Richards Law Office; Norm Semanko, Idaho Water Users Association; Suzanne Budge, National Federation of Independent Business; Keith Allred, The Common Interest; Mark Dunham and Alex LaBeau, Idaho Association of Commerce and Industry (IACI); Ron Williams, Williams Bradbury; and Mike Reynoldson, Micron Technology.

After opening remarks from **Cochairman Representative Lake**, **Senator Heinrich** asked that the Aug 1, 2007 minutes be corrected as follows. On page 3 it was stated that Senator Heinrich suggested a repeal of property taxes. He asked that this be corrected to say “personal property taxes.” Senator Siddoway agreed with the correction. **Senator Heinrich** moved that the minutes be approved with that correction. **Senator Siddoway** seconded and the minutes were approved.

Representative Lake commented that at the last meeting there was a sense that a methodology was needed for determining whether exemptions that are requested are necessary and/or legitimate. Committee members were asked to submit their ideas. Handouts titled Principles for Reevaluating Tax Deductions by **Senator Hill**, a handout from **Representative LeFavour** titled Additional Tax and Tax Exemption Evaluation Criteria and from Representative Killen, a handout titled Proposed Tax Evaluation Criteria were distributed.

Senator Hill explained that his list is made up of the ten criteria that were brought up several times in the last meeting by different presenters. These were actually established in 2001 by the American Institute of Certified Public Accountants. He said he took those ten principles and came up with questions under each that could be asked in dealing with tax deductions, credits

and exemptions. He noted that the questions are not necessarily “yes or no,” it is how important legislators think the questions are. His document also includes a weighting system. That is where the judgment of each individual legislator would come into play.

Representative LeFavour explained that her handout also included a type of weighting system. She said that some of her questions deal with specific parts of the tax code; i.e., one deals with nonprofit sales tax. She added that she also has a piece of draft legislation to go with that.

Representative Killen commented that his list consists of ideas he stated at the last meeting. He said he took those ideas and tried to convert what is essentially a very subjective evaluation into something objective. He said that some of the items are clearly policy issues and some are very easily measured. In his opinion this is appropriate because it is a combination of both. He said in looking at existing exemptions, deductions and credits, some are designed to stimulate, promote or subsidize a particular issue and some reflect social policy. As a result, the criteria needed to cover both. He pointed out that numbers 8 and 9 on his list are mutually exclusive. One is intended to deal with a new proposal and one with an existing item that is on the books.

Representative Killen commented that he took today’s list of exemptions to be looked at and ran them through all three of the screening criteria being discussed. He said some were easy and some were difficult but those he could do, came out consistently on each list.

Representative Lake said that this interim committee is supposed to make recommendations to the Legislature. He thinks these criteria are good information and are a reasonable approach for legislators to use in evaluating the exemptions. His sense is that implementation of this criteria will probably not require legislation. **Senator Hill** commented that in his opinion if this interim committee is going to make the decisions regarding exemptions, deductions and credits, it does not matter which criteria are used. Each member should just use the one that makes the most sense to them. He said they could recommend that the Legislature establish a long-term committee, including community members, to review the exemptions, deductions and credits and recommend such criteria be used in studying each exemption.

Senator Corder said that if everyone uses what they are comfortable with, that is what is being done currently. In his opinion, there is a need to actually establish criteria that is to be used in looking at these exemptions, deductions and credits. **Representative LeFavour** said that establishment of this interim committee shows that there has been realization that a problem exists. She thinks there needs to be a Resolution or Memorial from the interim committee recommending criteria to be used in the future.

Senator Corder said he would like to see the development of ten principles with questions under each that should be used by germane committees to help evaluate the exemptions, deductions and credits. **Representative Lake** suggested that a composite evaluation document drawn from the proposals discussed be developed and the committee agreed.

Representative Clark asked what the next step would be after the document is finalized.

Representative Lake stated that it would be distributed to germane committee members to keep in their files to be used when needed. **Representative Killen** commented that, regardless of what is developed or used, it would be helpful to draft a Memorial or Resolution so agency heads coming before the Legislature would know what criteria is used in looking at exemptions, deductions and credits. He thinks that would help them adjust their proposals to fit better within the criteria. **Representative Clark** clarified that agencies would use this document before asking for an exemption and if their proposal did not fit the criteria, they would not try to get it passed. **Representative Killen** thinks that knowing the criteria would help give agencies an idea of what to expect. He added that going through the criteria would help them identify where problems are before going before the Legislature.

Senator Siddoway voiced concern about how this will work out. In response to a question, **Senator Hill** said his list is a list of considerations that need to be taken into account in dealing with tax law change. The value placed on those will be somewhat subjective but, in his opinion, people would be remiss if the evaluation is not done using things that make good tax policy. He said the points system is not important.

Representative Lake suggested that they prepare a document that starts with **Senator Hill's** criteria with add ons from **Representative LeFavour** and **Representative Killen**. He said it is his sense that the committee should not require germane committees to use that list, but it would be a good tool.

Senator Stegner said it would be his idea that this final document be a philosophy of issues to be considered. He asked whether it is also the intention to include a weighting system.

Representative Lake said he sees this as something the co-chairs will take to their germane committees to help them rank any exemptions that come before them per recommendation from this interim committee. **Senator Hill** agreed but thinks many senators on his committee will welcome such a criteria. He said it would depend on individual members and not be required. As chairman of a committee, **Senator Hill** said that when someone comes before him with a proposal, it would be helpful to have this list to use.

Senator Corder commented that if this is criteria for good tax policy, why not memorialize this for future legislators. **Representative Lake** said that one Legislature cannot bind future Legislatures. **Senator Corder** said he was not suggesting that this bind future Legislatures but it could be memorialized as a good philosophy to use.

Representative Raybould reminded everyone that no matter what criteria are used, every committee member will have personal opinions as to whether proposals meet the criteria. Asking the questions is fine but not everyone will get the same answer. **Senator Stegner** agreed that it will be difficult to come up with a weighting system that is agreed to and meaningful. He would be more in favor of a general philosophical listing to be considered and be made available to germane committees.

Representative Killen agreed with **Senator Stegner**. He added that sometimes the most

important thing is to learn how to ask questions rather than how to answer them. In his opinion the original suggestion to take **Senator Hill's** ten principles with some additions would be appropriate when evaluating tax policy. At a minimum, it forces someone to ask the questions of themselves if no one else.

Representative Clark moved that the committee develop a criteria that begins with **Senator Hill's** ten principles and include additional principles from **Representative LeFavour** and **Representative Killen's** lists as a guideline for germane committees. **Representative Raybould** seconded.

Representative LeFavour said she would like to make sure this document does not just become another report that goes in a file.

The motion carried unanimously by voice vote.

In discussion of how the document would be developed, **Senator Stegner** said further discussion as to what makes up good tax policy might be necessary. **Senator Hill** commented that his criteria comes from information discussed at the last meeting. He said he would look that over in more detail to make sure his criteria match. He said he would put together another document as stated in the motion for the committee to review at tomorrow's meeting.

The next item for discussion was a list of exemptions, deductions and credits that were submitted by some committee members for further consideration. **Senator Hill** commented that since the grocery credit and personal property tax will be dealt with during next session, this committee might not want to bother discussing those two issues. **Representative Lake** said it was this committee's duty to review existing exemptions, deductions and credits.

Senator Stegner said the direction of the committee seems to be not to discuss grocery tax and personal property tax. He said this was fine with him because it will be discussed by the germane committees starting in the House of Representatives. He went on to say that if these items have been taken off the table, he was confused as to what the revenue generated by eliminating some other exemptions, deductions and credits would be applied to and how it would be used. In his opinion, this is part of this committee's charge. He asked whether the committee is supposed to apply the criteria that were discussed earlier or are they supposed to look for revenue sources for the items not being discussed. **Representative Raybould** said he agreed somewhat with **Senator Stegner**. He said that in his opinion the grocery tax credit and personal property tax should be looked at by the committee because if enacted, they are exemptions. He said this committee would not be obligated to find funding sources, just to evaluate them as with each of the other exemptions. **Representative Lake** said he did not think this committee could make a recommendation regarding personal property tax. In answer to **Senator Stegner**, he said that exemptions are looked at differently if a funding source is being sought. **Representative Lake** said the committee needs to look at exemptions and decide if they should stay or be removed based on their validity today.

Representative LeFavour commented that she was not aware of how the list of specific entities not taxed was decided upon and that she would like to see the committee discuss the general philosophy behind which entities would be excluded.

Senator Stegner said that before beginning a discussion of each item on the list, there should be consideration that all tax items on the list be removed.

He moved that the interim committee recommend to the Legislature the removal of all exemptions, deductions and credits on their list and the legislation be drafted to accomplish this. Senator Heinrich seconded.

Senator Stegner said it was not his intention to shorten the meeting. The legislature would control this and if such legislation was drafted, it would be discussed by the House Revenue and Taxation Committee and it could pass both houses. He said then there would be discussion of what should be added back in. He said it would be an interesting prospect if this committee could agree that all exemptions, deductions and credits need to be eliminated and that there is benefit in having recognition that the state has gone too far in the past. He added that this would allow every exemption, deduction and credit to be reevaluated; and as tax policy this would be fair and uniform.

Representative LeFavour said there are things on the list that she would not have chosen and some are not included that she would like to see. She agrees with the idea of reevaluating exemptions on a regular basis and would also like to see items not included be discussed at a later date.

Representative LeFavour made a substitute motion to commit to making a similar elimination and reevaluation of all exemptions on the books.

The motion failed for lack of a second.

Representative LeFavour reiterated the importance that there are items not on the list that need to be discussed and not everything on the list would fail to meet the criteria.

Representative Raybould asked if there was anything on the list that would make Idaho nonconforming to federal tax law and cause problems if it were eliminated. **Mr. Dan John, State Tax Commission** said he did not see anything that would have such ramifications.

Representative Killen made a substitute motion to adopt Senator Stegner's motion except for item 4C. (Not taxing state and local governments). He thinks this is just taking money from one pocket to the other. Representative Clark seconded.

Senator Stegner commented that his intention under item 1A (elimination of the investment tax credit) would not eliminate any carryforwards that exist for companies that have claimed them for that period of time. **Mr. John** explained carryforwards and said that if repealed

carryforwards could still result in a cost or loss of revenue to the state for many years.

Senator Stegner said he understands the reasoning behind removing item 4C but thinks there is more philosophical value in his original motion to remove that also. Everyone could find something to keep in. This will be revisited by the Legislature.

Senator Hill spoke in opposition to both motions. He said he appreciates the motions but has concerns. In looking at the committee's charge "to study the state's tax exemptions, credits and deductions," simply eliminating them does not seem like an actual study to him. He thinks the pros and cons of these need to be discussed in more detail.

Senator Corder spoke in support of the original motion. He mentioned a copy of a working document distributed by Mr. Ferguson and Mr. John at the last meeting. He clarified that this list of exemptions, deductions and credits being discussed today was to include items submitted by members as a starting point for the study that **Senator Hill** spoke of. He said that this current list does not include all exemptions, deductions and credits and that he planned to make a motion calling for the development of other lists to be examined in the future with sunsets.

After reviewing motions from the August minutes, **Senator Hill** commented that a motion was made by **Senator Corder** that criteria be submitted for evaluation but that he did not see a motion for submission of exemptions, deductions and credits for further discussion.

Representative LeFavour said it was her intent to make a motion following the vote on the current motion to eliminate another set subsequent to this list. She said her list will be more specific.

Representative Raybould said the committee passed a motion setting up the evaluation process for exemptions, deductions and credits. In his opinion, the minutes of this meeting will not show that the committee evaluated the list and he will vote no on the motion. He said if this motion fails he will have a motion to make this list as well as the criteria form available to the germane committees for their use. This will give the germane committees an opportunity to advertise a hearing and allow the public to comment.

In response to a question from **Representative Moyle**, **Representative Lake** said that this motion would not have to include offsets to revenue that would be increased by the removal of these exemptions, deductions and credits. He added that offsets would need to be identified before the end of the interim committee's meeting.

Senator Stegner asked the committee to consider the beneficial impact for this committee to come out with a broad statement about elimination of each of these exemptions. He agreed that every member can find some items that they like but that personal issues need to be put aside. Personal issues are the reason uniform policy for exemptions does not exist. This needs to be done on a broad scale. He said the purpose of the motion is to recognize that in totality these represent a broad system. The point is to suggest that everything needs to be reevaluated and

doing it this way sends a strong message to the Legislature.

Representative Moyle made an amended substitute motion to send this list to the germane committee with the list of criteria and suggest those committees hold hearings for each item on the list so that those people can testify and prove that they deserve to be on the list. Representative Collins seconded.

In clarification of the motions for **Representative LeFavour**, **Representative Moyle** explained that the original motion recommends all exemptions on the list be eliminated, the amended substitute motion suggests that germane committees look at the criteria list and deal with each exemption.

Representative Lake spoke in opposition to the motion. He feels that simply eliminating all of the exemptions, deductions and credits would not meet the charge of the committee to actually study each one before making a recommendation.

Senator Stegner said he would assume that his motion and the amended substitute motion get to the same point because the Legislature is the final decision maker. He noted that each motion would send a significantly different message to the Legislature. He said his original motion recognizes the faults of the system and the need to address exemptions that have been issued over time. In his opinion this sends the strongest message in trying to come to grips with the ongoing problem the state is facing.

Representative Moyle's amended substitute motion failed on roll call vote: 8 nays, 4 ayes.
Representative Killen's substitute motion failed on a roll call vote: 10 nays, 2 ayes.
Senator Stegner's motion failed on a roll call vote: 7 nays, 5 ayes.

Senator Hill moved that the committee recommend that the exemption for ski lift and grooming equipment be eliminated. Representative LeFavour seconded. Senator Hill explained he is not sure why this exemption was originally issued but thinks there was probably a time when Idaho was trying to encourage ski resorts in the area to bring in tourists. Today, he said, all other entertainment is subject to sales tax including golf courses, miniature golf, amusement parts and so on and he sees no logical reason to exempt ski areas. **Representative Moyle** asked if anyone from the ski industry had been made aware of this so they could be present to tell their side of the story. **Senator Hill** said that taking public testimony was not the charge of this committee, that is the job of germane committees. This committee was supposed to make an evaluation and make recommendations to the Legislature. He noted that all of these items will be subject to public input at the time it goes to the germane committees. **The motion passed by voice vote.**

Senator Stegner moved to repeal the investment tax credit on future investments. Representative Killen seconded. Senator Stegner clarified that this would be for future tax credits and that any carryovers would continue to exist. **Senator Siddoway** commented that if the committee does not follow through on its commitment, they are basically raising taxes on

certain groups. It was decided at the last meeting to make any decisions income neutral but that has not been part of the discussion. Elimination of this exemption would result in \$41 million more being paid in taxes and he would like to see how that is going to benefit taxpayers.

Senator Hill said he had the same quandary. He would love to be able to tie the two together but does not see how the committee can do that. The last motion made at the Aug 3, 2007 meeting said it was the intent of the committee to assume there would be an offset resulting in overall tax savings for the citizens of Idaho. The key word is “assume,” but it does not state that this interim committee has to identify specifics. **Senator Stegner** restated that it was his intention to abide by that motion and the assumption of offsetting tax savings.

Mr. Dan John gave some background information on the investment tax credit (ITC). He explained that the ITC was initiated in 1982 and piggybacked the federal credit at the time. There was a 10% federal credit and Idaho’s credit was 3%. The credit is essentially on tangible personal property; machinery and equipment that has at least a three year life and is used for business. There is no distinction between large companies and small companies. Any company that meets the criteria is eligible for the credit. Individuals or schedule C proprietorships as well as partnerships also qualify. The credit is limited to 50% of tax liability so if a company is not making any money, they cannot claim the credit. **Representative Lake** asked how this would translate to corporate income tax if it was removed. **Mr. John** said they have not done any studies as to whether the ITC could be repealed and the corporate tax rate lowered to compensate for that.

Senator Stegner’s motion passed on a roll call vote: 7 ayes, 5 nays.

Senator Hill moved to eliminate the sales tax exemption on broadcast equipment and supplies and on publishing equipment and supplies. Senator Corder seconded.

Mr. John explained that this is essentially a loose approximation of the production exemption for these entities. For broadcast equipment, the exemption is for the equipment that sends broadcast signals out. The publishing exemption goes to provide an exemption to people who publish newspapers that are not for resale to make up for the fact that they do not get a production exemption. These would be for advertising types of newspapers. **Senator Hill** asked whether sales tax is charged on advertising revenue for broadcasters. **Mr. John** said no. **Senator Hill** asked how this can be associated with the production exemption if no sales tax is charged to the ultimate consumer. **Mr. John** explained that the production exemption is not always tied to sales tax being charged on the end product. He said the production exemption ties to producing a product that is going to be sold even if it might ultimately be exempt from sales tax.

Representative LeFavour said there is a question of tax policy as to where in the process something is taxed. She said that if something is not taxed at any point, perhaps something has been missed and should be looked at.

Senator Hill's motion passed on a roll call vote: 7 ayes, 5 nays.

Senator Stegner said it was his intention to eventually go through all items on the list and moved to eliminate the youth rehabilitation credit. The motion was seconded by Senator Corder.

Representative LeFavour made a substitute motion to eliminate items B through I and items 1.1.05 , 1.1.14, 1.1.17, 1.1.18, 1.1.24, 1.1.31. The numbered items are included in the fiscal summary of Idaho's Tax Structure (see, Governor's General Fund Revenue Book FY 2008, pages 66-68). Representative Killen seconded.

Representative LeFavour said her intention in adding other items is to include more of the items that are simply incentives given to people for something they will probably already do.

Senator Stegner commented that he believes that people who work with youth rehabilitation truly do charitable work. His point with this credit is that the organizations listed are not the only organizations that deserve tax credits. He does not object to those companies/organizations; he objects to the fact that the credit is applied to a very small few when many others deserve it. He suggested that a replacement effort be approached that is more broad.

Mr. Dan John explained that the entities that are known to qualify are listed in code. When it was first put in statute, the Idaho Youth Ranch was the only organization specifically listed. He said the list is not all that are qualified, but those that specifically qualify by statute.

Senator Hill commented that this is in addition to the fact that people who make donations get a charitable contribution deduction and a federal deduction on their income taxes. **Mr. John** explained in more detail how the credit works.

Senator Hill spoke in support of the original motion because he said it is a matter of fairness. Not all organizations are specifically included and there is a huge incentive for making donations to those that are. In his view this credit puts one organization at an advantage over others.

Both Representative LeFavour's substitute motion and Senator Stegner's motion failed by roll call vote that ended in a tie.

Senator Hill suggested that the committee members decide over the lunch hour whether this is the direction they want to continue going. He said he was not particularly interested in going through each of these exemptions, deductions and credits resulting in tie votes over and over again. He suggested that the committee come up with a goal of what they are trying to achieve and the purpose for it. He said taking personal property tax and the grocery credit off the table took away certain goals and now they are just raising taxes. Some consensus needs to be reached so there is not as much discord between House and Senate members.

Representative LeFavour commented that the committee spent a lot of the morning talking

about criteria and then just made motions to eliminate exemptions without mentioning criteria again. She suggested going through the Idaho's Tax Structure list by category starting with "Uses of Income not Taxed" and use the criteria list.

Representative Lake suggested the committee adjourn for the day. **Representative LeFavour** agreed and said that would give people time to look at the list, apply the criteria and come back tomorrow with stronger arguments for or against.

Senator Siddoway said he had no problem doing this as homework but that he did not know exactly what each of the exemptions entails and how it affects different groups. He said he would need the help of experts to make meaningful decisions.

Senator Corder said, in his opinion, the committee was closer to its goal at the beginning of the day than they were now. He said he was not sure what the word "study" means in the charge. He said his goal was to have a process that at some point would actually allow a more in-depth study of each exemption and trying to figure out how exemptions can be more consistent. He added that legislation has failed that would require a certain percentage of exemptions, deductions and credits be reevaluated every certain number of years. In his opinion the committee should be looking in this direction. This would give the Legislature the opportunity to actually review the exemptions properly.

Representative Raybould agreed and said in order to review and evaluate input from the groups that requested the exemptions would be necessary. He suggested recommending that the legislative committees schedule a certain number of exemptions, deductions and credits be studied each year with public comment. They cannot all be done at once. In his opinion, this committee does not have resources to make proper decisions on these exemptions. He suggested the committee embark on a suggestion that germane committees set this up on a five year schedule and have interested groups testify and explain why the exemptions, deductions and credits are necessary.

Representative Killen agreed that the committee should concentrate more on the approach or strategy for evaluation rather than what is being done. He suggested development of an approach so that those on germane committees and those asking for exemptions will be on the same page and know what the criteria is. The emphasis should be on the overall approach as to what is relevant to help the committee make the proper decision.

Representative LeFavour made a motion to recommend legislation that would eventually sunset all of the exemptions, deductions and credits and require the germane committees to reevaluate them on a four year cycle. The first year would be income tax, second year, sales tax including goods not taxed, third year, specific entities not taxed and the fourth year would be services and sources of income not taxed. The criteria developed by this committee would be used in the evaluation. Representative Killen seconded.

Representative LeFavour explained that each exemption, deduction and credit would have an

automatic sunset unless the evaluation is favorable.

Senator Corder asked whether the exemptions, deductions and credits can be divided up in this manner. He said maybe they should allow the tax commission to divide the exemptions up according to workload. Some of these require a lot of data and need more time in order to comply. **Representative LeFavour** agreed that a sunset would require legislation this year and that should give the tax commission time to gather the data.

Mr. John agreed that a review of all income tax exemptions would require a lot of technical data. He noted that in the sales tax arena revenue is based on estimates. Services not taxed does not have a statute that can be sunsetted. He said the categories included in that section were just because data was available. He suggested it maybe easier to do income tax all together and sales tax all together but income tax would take a lot of time due to the amount of information to be gathered.

Representative Lake asked whether this could be done for income tax exemptions if the sunset date was July 1, 2008 and **Mr. John** suggested using January 1 of whatever year due to the nature of the tax year for income taxes.

Representative LeFavour said it would seem that the germane committees could use the criteria to go fairly quickly through exemptions, deductions and credits that fit the criteria. Those that did not fit the criteria or were in question could be given a closer look.

Representative LeFavour suggested January following this next session for the sunset date.

Representative Lake clarified that the motion is to sunset all exemptions, credits, deductions with income tax sunsetting January 2009, sales tax, 2010, specific entities not taxed, 2011 and services and sources of income in 2012.

Representative Raybould said he was not sure this is a good idea because it will make business planning very difficult. He said this maybe not a good idea with today's economy.

Representative Lake suggested making a substitute motion leaving the sunset date out. Representative Raybould agreed and suggested making the review using the criteria and allowing public testimony. Representative Clark seconded.

In response to a question from **Senator Stegner** regarding the significant workload such a review will add in addition to other germane committee responsibilities, **Senator Hill** said that was a major concern and even this interim committee tried to limit its scope. He said he would like to see some sort of priority basis as to what is to be looked at and when. He added the need to be careful in how this is worded because if an exemption is also a federal exemption, it would not be included in review. He would like to narrow in on the criteria used and prioritize what needs to be looked at first.

Representative Raybould modified his substitute motion to say that exemptions this

committee recommends be studied by full committee. This would allow the interim committee to target specific exemptions that are most important to be looked at. **Senator Hill** agreed.

Representative Raybould restated his substitute motion that this committee recommend a prioritized list of exemptions, deductions and credits for the germane committees to review and hold hearings on.

Senator Hill said this would not include recommendations from this committee on whether a particular item should be repealed.

Representative LeFavour said, in her opinion, it is important to have legislation that actually sunsets the exemptions, deductions and credits otherwise there will be no further evaluations. It is her hope to try to have a real examination and a sunset is the only way to do that. She added that a sunset does allow an easy way out on issues that do not meet the criteria.

Senator Heinrich agreed with **Representative Raybould**. He said one reason Idaho has been able to attract good business into the state is because of our stable and consistent tax policy. He said he appreciates sunseting but would prefer to do that after the issue has been studied and a decision on repeal has been made. This gives businesses time to plan for the change.

Representative Killen clarified that the committee was still going to address the criteria to be used in studying the exemptions and **Representative Lake** agreed.

Senator Stegner said there was no reason to think the Legislature will eliminate any exemptions. He said that public hearings will hear from those that get the benefit and the Idaho Legislature has not historically refused any exemption request and will probably not eliminate any either. He is not confident this approach will be fruitful and thinks it will not result in any significant change in the attitude of the Legislature. He also voiced concerns about the workload this will put on each germane committee.

Representative Raybould said the Legislature does have the ability to accomplish this. He suggested something similar to how the House of Representatives reviews rules using subcommittees. He suggested a joint subcommittee of House and Senate members look at these and come back and report to the germane committees.

The substitute motion was restated that this committee recommend to the germane committees that they proceed with a review of exemptions, deductions and credits as per a prioritized list from this interim committee.

The substitute motion passed with a roll call vote, 11 ayes, 1 nay.

Representative Lake said the next step is prioritizing those items to be recommended to the germane committees.

Senator Hill suggested the committee adjourn for the day and take some time to look over the criteria lists and to come up with one main list for discussion and approval tomorrow.

Representative Moyle moved that the committee adjourn until tomorrow, October 2 and Senator Hill seconded. The meeting was adjourned until 9:00 a.m, Tuesday, October 2, 2007.

**Minutes
Tax Exemptions Interim Committee
October 2, 2007
J.R. Williams Building, East Conference Room
Boise, Idaho**

The October 2, 2007 meeting was called to order at 9:00 a.m. by Cochairman Senator Brent Hill. Other committee members present were Cochairman Representative Dennis Lake, Senator Joe Stegner, Senator Tim Corder, Senator Lee Heinrich, Senator Jeff Siddoway, Senator David Langhorst, Representative Gary Collins, Representative Jim Clark, Representative Mike Moyle, Representative Dell Raybould, Representative Nicole LeFavour and Representative Bill Killen. Senator Bilyeu was absent and excused. Legislative Services Office staff members present were Mike Nugent, Eric Milstead and Toni Hobbs.

Others present were Robin Nettinga, Idaho Education Association; Joe Gallegos and Jim Carrel, AARP; Randy Nelson, Associated Taxpayers of Idaho; Norm Semanko, Idaho Water Users Association; Mark Dunham and Alex LaBeau, IACI; Benjamin Davenport, Evans Keane; Russ Hendricks, Farm Bureau; Erin Bennett and John Watts, Veritas Advisors; Skip Smyser, Smyser and Connolly; Derek Santos, DFM; Suzanne Budge, SBS Associates; Kris Ellis, Benton, Ellis Associates; Keith Allred, The Common Interest; Russell Westerburg, Rocky Mountain Power; Betsy Russell, The Spokesman Review; Rob Winslow, Idaho Association of School Administrators; Val Brooks, Idaho Credit Union League; John Eaton, Idaho Association of Realtors; Neil Colwell, Avista Corp and Representative Diana Thomas, District 9.

Mr. Dan John, State Tax Commission spoke to the committee regarding tax incentives and reporting by states that were discussed at a conference he attended. As a result of this discussion, he conducted a survey of 14 western states at the conference to see whether they offer business incentives and whether any follow-up and/or reporting is required. The most common problem identified was that most states have no accountability and no formal way to measure results. This survey is available in detail in the Legislative Services Office.

Mr. John noted that Idaho has a number of incentives and most people think that the state does not have accountability. He said that is not really true. In the areas of corporate headquarters and the small employer act, to get incentives a company or employer is required to spend a certain amount of money. He said this is fairly common. He went on to say that the accountability comes into play when, in order to qualify for the credits and deductions, the employer must employ a certain number of people above a specific wage rate and provide benefits. This will give fairly large incentives if met and he said no one has ever filed for it. He added that these would be monitored very closely and that if a company takes the credit and does not meet the requirements, they must give all of the credits back. He said it is a fairly substantial property tax exemption if met.

The question is what is really an incentive and what is an adjustment to the tax base. **Mr. John** said the investment credit is an incentive but items such as the youth and rehabilitation credit are probably not incentives because that is really just a way to funnel contributions through specific entities. The contributions would happen without the incentive, this just directs them. He said the capital gains is really just a base issue and that the Legislature did not want to tax that kind of income in the same manner other income is taxed. He added that most of our sales tax exemptions are not incentives, they are base adjustments. He said this will be one of the bigger challenges the Legislature faces.

Mr. John said one idea that came up at the conference was whether incentives should be offered through the tax system or whether they should be directly funded. This would definitely provide accountability from an agency that is not the tax department.

In response to a question from **Senator Hill**, **Mr. John** explained that directly funded rather than a credit or exemption in tax code means that money would be appropriated with an expectation of specific results and someone would be designated to decide who gets that money. He stated that the Department of Labor does something like this for work force training with a pool of money available. He said that the economists at this conference agreed that this might be a good option.

In closing, **Mr. John** summarized a few points that were brought up at the conference. These included:

- C Identify someone to review tax exemptions and look at them from an accountability standpoint rather than an audit standpoint.
- C Every incentive should have a clearly defined purpose (know what the incentive is trying to reach).
- C Eligibility and certification should have an identified responsible state agency, not the tax commission.
- C Should include caps, clawbacks* and sunsets.
- C Should include program review (not by tax commission).
- C Reporting should be simple.

(*Note - *A “clawback” (also called “recapture”) is a contractual provision whereby a company may be required to pay back all or part of a development subsidy, such as a grant, loan or tax break, if it fails to fulfill its responsibilities required by the subsidy agreement or program.*)

Representative LeFavour asked about refundable credits. **Mr. John** said these are more akin to direct appropriation. He said transferrable incentives are hard to deal with and keep track of.

In response to a question from **Representative Killen**, **Mr. John** said that no state he talked to has transferrable credits. There was legislation (HB272) a few years ago that would have put some reporting responsibilities on the Department of Commerce and on industry to track some incentives. He stated that it had some good points regarding tracking in that it was keyed on jobs. It wanted to track incentives by whether companies that enjoyed the incentives were hiring

more people. It was difficult to administer because the Department of Commerce would not have had the data required to know whether companies were complying.

Senator Corder commented that there had been legislation drafted that assigned review of the exemptions, deductions and credits to the Office of Performance Evaluations (OPE) that did not pass. He asked whether OPE could do this evaluation and whether it would be difficult getting data from the tax commission. **Mr. John** said he thinks OPE can look at confidential information to see if the tax commission is doing what it is supposed to do. The problem is that the data is very voluminous and it is with the tax commission. He said that the tax commission had no problem with tracking, they just look at information in a different way than the Department of Commerce because Commerce focuses on recruiting businesses into the state and the tax commission looks at it from an audit perspective.

In response to a question from **Senator Hill**, **Mr. John** said that regarding business incentives, if they are truly incentives, it would make more sense for them to have a deadline. If an incentive is ongoing, it just becomes an adjustment to the base and seems to be just giving someone a tax benefit for something they would already do.

The next item for discussion was the criteria sheet. After committee discussion the following was agreed upon.

Principles for Evaluating Tax Deductions, Credits and Exemptions in the State of Idaho

1. EQUITY AND FAIRNESS

- C a. Is the benefit available to ALL organizations or individuals in similar industries or situations?
- C b. Is the benefit BROAD (for virtually all classes of taxpayers) or NARROW (limited to a few?)
- C c. Is the product or service, or its component parts, already taxed by the state or other government?)

2. CERTAINTY

- C a. Are rules clear about when and how tax is paid and amount due?

3. CONVENIENCE OF PAYMENT

- C a. Is the tax payable at a time and in a manner convenient to taxpayers?

4. ECONOMY IN ADMINISTRATION

- C a. Is the benefit easy to claim by the taxpayer?
- C b. Is the benefit easy to administer by the government?

5. SIMPLICITY

- C a. Does the benefit simplify or clarify existing tax code rather than complicate it?
- C b. Is the benefit easily calculated and accountability maintained with minimal recordkeeping?
- C c. Does the benefit bring us in compliance with federal law rather than create another departure?
- C d. Are unintended consequences unlikely (are ramifications well-understood?)

6. BENEFIT OBJECTIVES

- C a. How does the benefit influence the behavior of individual taxpayers or organizations?
- C b. Are the objectives of the benefit clearly stated?
- C c. To what extent does the tax benefit promote the public interest?
- C d. Does the benefit serve to attract or stimulate the state's economic condition, particularly in areas in need of growth?
- C e. Is the benefit needed in order to compete with similar benefits in surrounding states?
- 7. TRANSPARENCY AND VISIBILITY
 - C a. Can the public easily understand the benefit and/or consequence of any tax shift?
 - C b. Is the benefit better claimed as a tax break rather than through a budget appropriation?
 - C c. Would a sunset, clawback or cap provision be appropriate?
- 8. APPROPRIATE GOVERNMENT REVENUES
 - C a. Does the tax break benefit an organization that provides goods or services that the government would otherwise provide?
 - C b. Is the fiscal impact of the tax benefit reasonably determinable with existing or readily developed data?
 - C c. Does the benefit have an acceptable impact on government revenues?

Representative Lake made a motion that the interim committee adopt the points outlined in the document titled Principles to be Used in Recommending Certain Exemptions for Evaluation to Germane Committees. Senator Langhorst seconded.

Representative Killen asked whether these points would be only for considering existing tax benefits. **Representative Lake** said that the committee charge is just to review existing tax benefits. **Senator Hill** agreed and read the charge "to develop a strategy to statutorily limit exemptions, deductions and credits as they were originally intended." He said that sounds like those that are already existing. He said he would assume that this criteria would be used for future exemptions, deductions and credits as well as those in existence. He said it would not make sense to use one criteria for existing and a different criteria for new ones.

Senator Corder said he thought there was discussion yesterday that part of the charge was to develop strategies for the future as well as those in existence. **Representative Lake** said he would use this criteria for future exemptions in his committee. **Senator Langhorst** commented that the statement of purpose for the resolution forming this interim committee does say "a continuing strategy."

The motion carried unanimously by voice vote.

The next item for discussion was identification of exemptions, deductions and credits the interim committee will recommend to the germane committees for evaluation this coming session.

Senator Hill asked that the committee members use the list titled Idaho Tax Structure beginning with income tax exemptions, deductions and credits and identify their top five priorities. The committee identified a first and second tier to be recommended in each category. The categories were divided as follows:

- C Income Tax
 - C Uses of Income Not Taxed and Sources of Income Not Taxed
- C Sales Tax
 - C Specific Uses Not Taxed
 - C Goods Not Taxed and Services Not Taxed
 - C Specific Entities Not Taxed

Senator Stegner stated that he could not comply with this ranking because, in his opinion, this is not the proper method for going about this. He said he would be willing to defer to the rest of the committee in terms of what they choose.

Each member was asked to give their choices. The following is the list that was agreed upon by committee members.

Uses of Income Not Taxed and Sources of Income Not Taxed

First Tier

- 1.1.01 Investment Tax Credit
- 1.1.04 Youth Rehabilitation Credit
- 1.1.21 Broadband Investment Credit
- 1.1.25 Corporate Headquarters Investment Credit
- 1.1.27 Corporate Headquarters New Jobs Credit

Second Tier

- 1.1.10 Alternative Energy Device Deduction
- 1.1.11 Insulation Deduction
- 1.2.06 Lottery Winnings Exclusion

Sales Tax Expenditures

Specific Uses Not Taxed

First Tier

- 2.1.05 Broadcast Equipment and Supplies
- 2.1.06 Publishing Equipment and Supplies
- 2.1.21 Ski Lifts and Snowgrooming Equipment
- 2.1.25 Corporate Headquarters Construction

Second Tier

- 2.1.22 Clean Rooms
- 2.1.28 Media Production Projects

Sales Tax Expenditures

Goods Not Taxed and Services Not Taxed

First Tier

- 2.2.05 Vending Machine and Amusement Devices

- 2.2.07 Funeral Caskets
- 2.3.12 Lottery Tickets and Pari-mutuel Betting
- Second Tier**
- 2.3.06 Professional Services

Sales Tax Expenditures
Specific Entities Not Taxed
First Tier

- 2.4.09 State of Idaho and Local Government Purchases
- 2.4.18 Sales Through Vending Machines
- 2.4.19 Auto Manufacturer Rebates

- Second Tier**
- 2.4.11 INL Research and Development Purchases
 - 2.4.15 Sales by Indian Tribes on Reservations

After this list was finalized **Senator Hill** brought up the fact that four motions had been approved yesterday that recommended the elimination of five different exemptions. In his opinion, these motions are conflicting with the motion made today for evaluation with no recommendation. He said it would be appropriate to reconsider the motions from the previous day.

Senator Corder said he was not sure he agreed with reconsidering the motions. He said the committee has set the stage for committee chairs to take care of each of the issues discussed and does not think reconsideration is required. **Senator Hill** commented that the committee does not have to reconsider the motions but since the direction has changed, it might be appropriate. **Senator Corder** said the motions are not conflicting to him and fit with what has been done today. **Senator Stegner** agreed with **Senator Corder** that the motions are not in conflict. He stated that he would actually like to include more items for repeal.

Senator Heinrich distributed a packet of property tax exemption statutes that are not found in Section 63-602, Idaho Code. He said the same issues exist with property tax exemptions as with sales and income tax exemptions and he wanted to bring that to the committee's attention.

Senator Hill stated that the issue of direct appropriations being granted rather than tax credits and/or exemptions had been mentioned during the meeting. It was decided **Senator Stegner** and any other interested committee members would handle this idea on an unofficial basis. **Senator Stegner** would be allowed an opportunity to go over this issue with members of the germane committees during the regular session.

Representative LeFavour distributed a rough draft of legislation dealing with criteria for entities exempted from sales tax and asked others to work with her to refine and expand that.

Representative Killen said he was intrigued by the possibility of using a joint subcommittee to help with evaluation of the exemptions, deductions and credits and asked for more information.

Representative Raybould reiterated that the House uses subcommittees to review agency rules and that perhaps something similar could be used allowing joint subcommittees of both Senate and House members to work on this evaluation process. They could then report back to their respective houses and it would not eliminate the full committees from having input on any decision that is made.

With no further business, the meeting was adjourned at 3:00 p.m.